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OFFICE OF PETITIONS

In re Application of
Toshio Kitamura et al.
Application No. 10/531,973
Filed: November 18, 2005
Attorney Docket No. 14875-0142US1

:
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed June 10, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from sixty-five days (65) to sixty-eight (68) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is sixty-eight (68) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 11, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is sixty-five days. On June 10, 2009, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is sixty-five (65) days.

The Office initially determined a patent term adjustment of sixty-five (65) days based on an adjustment for PTO delay of two hundred eighteen (218) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced by applicants' delay of ninety-two (92) and sixty-one (61) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 218 days has been reviewed and found to be correct. The adjustment of ninety-two (92) days has been reviewed and found to be correct. The reduction of sixty-one (61) days of applicant delay is at issue.

Applicants dispute the reduction of sixty-one (61) days attributed to applicant for failing

¹ PALM records indicate that the Issue Fee was received in the Office on June 10, 2009.

to respond within three months to the Final Office Action mailed August 26, 2008. A review of the record reveals that the initial determination of patent term adjustment of 65 days is incorrect.

A response to a Final Office Action mailed August 26, 2008 was incorrectly listed as having been filed on January 26, 2008 instead of the receipt date of January 23, 2008 which was filed with a three month extension of time. Thus, instead of a 61 day reduction for applicant delay pursuant to 37 C.F.R. §1.704(b), 58 days should have been accorded. Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance should have been 68 days rather than 65 days listed on the notice of allowance.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

Enclosure: Copy of Revised PTA calculation

Day : Monday
Date: 11/9/2009

PALM INTRANET

Time: 09:59:30

PTA Calculations for Application: 10/531973

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|--------------------------|------------|-------------------------|-----|
| Application Filing Date: | 11/18/2005 | PTO Delay (PTO): | 218 |
| Issue Date of Patent: | | Three Years: | 0 |
| Pre-Issue Petitions: | 0 | Applicant Delay (APPL): | 153 |
| Post-Issue Petitions: | 0 | Total PTA (days): | 68 |
| PTO Delay Adjustment: | 3 | | |

File Contents History

| Number | Date | Contents Description | PTO | APPL | START |
|--------|------------|--|-----|------|-------|
| 65 | 11/05/2009 | ADJUSTMENT OF PTA CALCULATION BY PTO | 3 | | |
| 53 | 03/11/2009 | MAIL NOTICE OF ALLOWANCE | | | |
| 52 | 03/05/2009 | DOCUMENT VERIFICATION | | | |
| 51 | 03/05/2009 | ISSUE REVISION COMPLETED | | | |
| 50 | 03/05/2009 | EXAMINER'S AMENDMENT COMMUNICATION | | | |
| 49 | 03/05/2009 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 48 | 03/05/2009 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 47 | 03/03/2009 | NOTICE OF ALLOWABILITY | | | |
| 43 | 01/23/2009 | NOTICE OF APPEAL FILED | | | |
| 42 | 02/12/2009 | DATE FORWARDED TO EXAMINER | | | |
| 41 | 01/26/2009 | AMENDMENT AFTER FINAL REJECTION | | 61 | 39 |
| 40 | 01/26/2009 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 39 | 08/26/2008 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 38 | 08/25/2008 | FINAL REJECTION | | | |
| 37 | 06/06/2008 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) | | | |
| 36 | 06/06/2008 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) | | | |
| 35 | 06/24/2008 | DATE FORWARDED TO EXAMINER | | | |
| 34 | 06/06/2008 | RESPONSE AFTER NON-FINAL ACTION | | 92 | 32 |
| 33 | 06/06/2008 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 32 | 12/06/2007 | MAIL NON-FINAL REJECTION | | | |
| 31 | 12/04/2007 | NON-FINAL REJECTION | | | |
| 28 | 01/10/2006 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |

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|------|------------|--|-----|--|----|
| 26 | 10/04/2007 | DATE FORWARDED TO EXAMINER | | | |
| 25 | 09/26/2007 | RESPONSE TO ELECTION / RESTRICTION FILED | | | |
| 24 | 08/24/2007 | MAIL RESTRICTION REQUIREMENT | 218 | | -1 |
| 23 | 08/22/2007 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 22 | 08/01/2007 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 21 | 07/26/2006 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
| 20 | 07/26/2006 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 19.7 | 01/10/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 19 | 01/10/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 15 | 03/12/2006 | CLEARED BY OIPE CSR | | | |
| 14 | 11/18/2005 | 371 COMPLETION DATE | | | |
| 13 | 01/20/2006 | APPLICATION DISPATCHED FROM OIPE | | | |
| 12 | 01/20/2006 | NOTICE OF DO/EO ACCEPTANCE MAILED | | | |
| 11 | 11/18/2005 | ADDITIONAL APPLICATION FILING FEES | | | |
| 8 | 01/10/2006 | INFORMATION DISCLOSURE STATEMENTS | | | |
| 7 | 01/10/2006 | COPY OF REFERENCES CITED IN INTERNATIONAL SEARCH REPORT | | | |
| 6 | 11/18/2005 | A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC | | | |

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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